

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of

Establishment of a Class A  
Television Service

MM Docket No. 00-10

**REPORT AND ORDER**

Adopted: March 28, 2000

Released: April 4, 2000

By the Commission:

**Table of Contents**

	<u>Paragraph</u>
I. Introduction	1
II. Background	2
III. Discussion	8
A. Certification and Application for License	8
1. Statutory Timeframes	8
2. Ongoing Eligibility	10
B. Qualifying Low-Power Television Stations	15
1. Statutory Eligibility Criteria	15
2. Locally-Produced Programming	16
3. Operating Requirements	21
4. Alternative Eligibility Criteria	32
C. Class A Interference Protection Rights and Responsibilities	36
1. Class A Protected Service Area	36
2. Time Protection Begins	39
3. Protection of Pending NTSC TV Applications and Facilities	43
4. New DTV Service	49
5. DTV Maximization	51

DISPATCHED

APR 12 1 18 PM '00

FCC MAIL SECTION

---

a.	Definition of Maximization	51
b.	Preserving the Right to Maximize	54
c.	Allotment Adjustments	61
D.	Methods of Interference Protection to Class A Facilities	65
1.	Analog Full-Service TV Protection to Analog Class A	67
2.	Analog LPTV, TV Translator, and Class A Protection to Analog Class A	70
3.	Full-Service DTV Protection to Analog Class A	71
4.	Full-Service NTSC and DTV Protection to Digital Class A	72
5.	LPTV, TV Translator, and Class A Modification Protection to Digital Class A	73
6.	Alternative Means of Interference Protection	74
E.	Methods of Interference Protection by Class A to Other Facilities	76
1.	Class A Protection of NTSC	76
2.	Class A Protection of DTV	78
3.	Protection of LPTV and TV Translators	80
4.	Land Mobile Radio Services and TV Channel 16	82
F.	Change Applications	85
G.	Common Ownership	88
H.	Issuance of DTV Licenses to Class A, TV Translator, and LPTV Stations	90
I.	Interim Qualifications	96
1.	Stations Operating Between 698 and 806 MHz	96
2.	Channels Off-Limits	104
J.	Class A Applications	106
1.	Application Forms	106
2.	Class A Facilities Changes	109
3.	Class A Channel Displacement Relief	113
K.	Remaining Issues	115
1.	Call Signs	115
2.	Certification of Class A Transmitters	117
3.	Fees	119
4.	International Coordination Provisions	121
5.	Broadcast Auxiliary Frequencies	122
IV.	Conclusion	123
Appendix A: Rules		

Appendix B: List of Commenters

Appendix C: Final Regulatory Flexibility Analysis

Appendix D: Class A Application Form

## I. INTRODUCTION

1. In this *Report and Order*, we establish a Class A television service to implement the Community Broadcasters Protection Act of 1999 (CBPA), which was signed into law November 29, 1999.<sup>1</sup> Pursuant to the CBPA and our implementing rules, certain qualifying low-power television (LPTV) stations will be accorded Class A status. Class A licensees will have "primary" status as television broadcasters, thereby gaining a measure of protection from full-service television stations, even as those stations convert to digital format. The LPTV stations eligible for Class A status under the CBPA and our rules provide locally-originated programming, often to rural and certain urban communities that have either no or little access to such programming. LPTV stations are owned by a wide variety of licensees, including minorities and women, and often provide "niche" programming to residents of specific ethnic, racial, and interest communities. The actions we take today will facilitate the acquisition of capital needed by these stations to allow them to continue to provide free, over-the-air programming, including locally-originated programming, to their communities. In addition, by improving the commercial viability of LPTV stations that provide valuable programming, our action today is consistent with our fundamental goals of ensuring diversity and localism in television broadcasting.

## II. BACKGROUND

2. From its creation by the Commission in 1982, the low power television service has been a "secondary spectrum priority" service whose members "may not cause objectionable interference to existing full-service stations, and ... must yield to facilities increases of existing full-service stations or to new full-service stations where interference occurs."<sup>2</sup> Currently, there are approximately 2,200 licensed LPTV stations in approximately 1,000 communities,<sup>3</sup> operating in all 50 states. These stations serve both rural and urban audiences. Because they operate at reduced power levels,<sup>4</sup> LPTV stations serve a much smaller geographic region than full-service stations and can fit into areas where a higher power station cannot be accommodated in the Table of Allotments. In many cases, LPTV stations may be the only television

<sup>1</sup> Community Broadcasters Protection Act of 1999, Pub. L. No. 106-113, 113 Stat. Appendix I at pp. 1501A-594 – 1501A-598 (1999), *codified at* 47 U.S.C. § 336(f) (CBPA). This bill was enacted as part of the Intellectual Property and Communications Omnibus Reform Act of 1999, which itself is part of a larger consolidated omnibus appropriations bill entitled "Making consolidated appropriations for the fiscal year ending September 30, 2000, and for other purposes."

<sup>2</sup> *Report and Order* in BC Docket No. 78-253, 51 R.R. 2d 476, 486 (1982). *See also id.* at n. 23: "[Because] it is integral to the concept of a secondary service that it yield to a mutually exclusive primary service, we shall not take low power stations into account in authorizing full-service stations, and we urge low power applicants to consider this fact when they select channels."

<sup>3</sup> *Public Notice*, "Broadcast Station Totals as [of] September 30, 1999" (*rel.* November 22, 1999).

<sup>4</sup> LPTV stations may radiate up to 3 kilowatts of power for stations operating on the VHF band (*i.e.*, channels 2 through 13), and 150 kilowatts of power for stations operating on the UHF band (*i.e.*, channels 14 through 69). By comparison, full-service stations on VHF channels radiate up to 316 kilowatts of power, and stations on the UHF channels radiate up to 5,000 kilowatts of power. LPTV signals typically extend to a range of approximately 15 to 20 miles, while the signals of full-service stations can reach as far as 60 to 80 miles away.

station in an area providing local news, weather, and public affairs programming.<sup>5</sup> Even in some well-served markets, LPTV stations may provide the only local service to residents of discrete geographical communities within those markets.<sup>6</sup> Many LPTV stations air "niche" programming, often locally produced, to residents of specific ethnic, racial, and interest communities within the larger area, including programming in foreign languages.<sup>7</sup>

3. The LPTV service has significantly increased the diversity of broadcast station ownership. Stations are operated by such diverse entities as community groups, schools and colleges, religious organizations, radio and TV broadcasters, and a wide variety of small businesses. The service has also provided first-time ownership opportunities for minorities and women.<sup>8</sup>

4. In the CBPA, Congress found that the future of low-power television is uncertain.<sup>9</sup> Because LPTV stations have secondary spectrum status, they can be displaced by full-service TV stations that seek to expand their own service area, or by new full-service stations seeking to enter the same market. The statute finds that this regulatory status affects the ability of LPTV stations to raise necessary capital.<sup>10</sup> In addition, Congress recognized that the conversion to digital television further complicates the uncertain future of LPTV stations. To facilitate the transition from analog to digital television, the Commission has provided a second channel for each full-service television licensee in the country that will be used for digital broadcasting during the period of conversion to an all-digital broadcast service. In assigning DTV channels, the Commission maintained the secondary status of LPTV stations and TV translators and, in order to provide all full-service stations with a second channel, was compelled to establish DTV allotments

---

<sup>5</sup> See *First Report and Order, In the Matter of Review of the Commission's Rules Governing the Low Power Television Service*, MM Docket No. 93-114, 9 FCC Rcd 2555 (1994) ("*LPTV First Report and Order*"). See also Comments of Free Life Ministries, Inc. at 1. References to comments pertain to comments filed in response to the *Public Notice* (No. 82996) of the filing of the Community Broadcasters Association (CBA) petition for rule making. See n. 16, below.

<sup>6</sup> Comments of D Lindsey Communications at 1 (noting that its LPTV station is the only station providing local news for residents of Temecula and Murrietta, CA, both of which are within the Los Angeles DMA). See also Comments of Engle Broadcasting at 1-2.

<sup>7</sup> *LPTV First Report and Order*, 9 FCC Rcd at 2555 (1994). See also Comments of Community Broadcasting Company of San Diego at 2; Hispanic Broadcasters of AZ, Inc. at 1; Channel 19 TV Corp. at 2; ZGS Broadcast Holding, Inc. at 1; National Minority T.V., Inc. at 1; Liberty University, Inc. at 2; Debra Goodworth, Turnpike Television at 1-2.

<sup>8</sup> *LPTV First Report and Order*, 9 FCC Rcd at 2555 (1994). See also, *Sixth Further Notice of Proposed Rule Making, In the Matter of Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, MM Docket No. 87-268, 11 FCC Rcd 10968, 10995 (1996).

<sup>9</sup> Section-by-Section Analysis to S. 1948, the Act known as the "Intellectual Property and Communications Omnibus Reform Act of 1999," as printed in the Congressional Record of November 17, 1999 at pages S 14708 - 14726 ("Section-by-Section Analysis"), at S 14724.

<sup>10</sup> Section-by-Section Analysis at S 14724.

that will displace a number of LPTV stations.<sup>11</sup> Although the Commission has taken a number of steps to mitigate the impact of the DTV transition on stations in the LPTV service,<sup>12</sup> that transition nonetheless will have significant adverse effects on many stations, particularly LPTV stations operating in urban areas where there are few, if any, available replacement channels.

5. Congress sought in the CBPA to address some of these issues by providing certain low power television stations "primary" spectrum use status. The CBPA requires the Commission, within 120 days after the date of enactment, to prescribe regulations establishing a Class A television license available to qualifying LPTV stations. The CBPA directs that Class A licensees be subject to the same license terms and renewal standards as full-power television licensees, and that Class A licensees be accorded primary status as television broadcasters as long as they continue to meet the requirements set forth in the statute for a qualifying low-power station. In addition, among other matters, the CBPA sets out certain certification and application procedures for low-power television licensees seeking Class A designation, prescribes the criteria low-power stations must meet to be eligible for a Class A license, and outlines the interference protection Class A applicants must provide to analog (or NTSC), digital (DTV), LPTV, and TV translator stations.

6. Congress also recognized, however, that, because, of the emerging DTV service, not all LPTV stations could be guaranteed a certain future.<sup>13</sup> Congress recognized the importance and engineering complexity of the FCC's plan to convert full-service stations to digital format, and protected the ability of these stations to provide both digital and analog service during the transition.<sup>14</sup>

7. On January 13, 2000, the Commission adopted an *Order and Notice of Proposed Rule Making (Notice)* seeking comment on a wide range of issues related to implementation of the CBPA. The Commission also terminated an earlier proceeding relating to establishment of primary status for LPTV stations. In its earlier proceeding, the Commission had adopted a *Notice of Proposed Rule Making (September 22 Notice)*<sup>15</sup> responding to a petition for rule making filed by the Community Broadcasters

<sup>11</sup> In the DTV proceeding the Commission estimated that approximately 55 to 65 percent of existing LPTV stations and 80 to 90 percent of all TV translator stations would be able to continue to operate and that operations in or near major urban areas would be most affected by the implementation of the DTV service. *Sixth Further Notice of Proposed Rule Making*, MM Docket No. 87-268, 11 FCC Rcd 10968 (1996). Television translators, which rebroadcast the programs of full-service TV stations, may be affected to a lesser extent because many translators operate in mountainous areas and are terrain-shielded from other stations. In addition to the DTV impact, hundreds of LPTV and translator stations operate on channels 60-69 and are required by law to vacate these channels by the end of the DTV transition period due to the reallocation of this spectrum for other uses. Full-service TV stations operating on channels 60-69 are also required to relocate to lower channels by that time. *In the Matter of Reallocation of Television Channels 60-69, the 746-806 MHz Band, Report and Order* in ET Docket No. 97-157, 12 FCC Rcd 22953 (1998).

<sup>12</sup> See *Notice of Proposed Rule Making, In the Matter of Establishment of a Class A Television Service*, MM Docket No. 99-292, RM-9260, FCC 99-257 (rel. Sept. 29, 1999) (*September 22 Notice*) at ¶¶ 9-14. The Commission terminated this earlier proceeding considering establishment of a form of primary status for LPTV stations in light of the subsequent passage of the CBPA on November 29, 1999.

<sup>13</sup> Section-by-Section Analysis at S 14725.

<sup>14</sup> Section-by-Section Analysis at S 14724.

<sup>15</sup> In its January 13 *Notice*, the Commission indicated it had suspended the comment cycle in the earlier proceeding in light of passage of the CBPA, and directed that parties that filed comments in response to the (continued....)

Association (CBA).<sup>16</sup> In light of passage of the CBPA, which addresses many of the same issues raised in the *September 22 Notice* and the CBA petition, we terminated the earlier proceeding and initiated this new proceeding to implement the CBPA.

### III. DISCUSSION

#### A. Certification and Application for License

##### 1. Statutory Timeframes

8. Section (f)(1)(A) of the CBPA requires the Commission, within 120 days after the date of enactment (November 29, 1999), to prescribe regulations establishing a Class A television service.<sup>17</sup> The CBPA establishes a two-part certification and application procedure for LPTV stations seeking Class A status. First, the CBPA directed the Commission to send a notice to all LPTV licensees describing the requirements for Class A designation.<sup>18</sup> Within 60 days of the date of enactment, licensees intending to seek Class A designation were required to submit to the Commission a certification of eligibility based on the applicable qualification requirements.<sup>19</sup>

9. The CBPA provides that, absent a material deficiency in a licensee's certification of eligibility, the Commission shall grant the certification of eligibility to apply for Class A status.<sup>20</sup> The CBPA further provides that licensees "may" submit an application for Class A designation "within 30 days after final regulations are adopted" implementing the CBPA. We will construe the phrase "final regulations" in this context to mean the effective date of the Class A rules adopted herein. Thus, Class A applications may be filed beginning on the effective date of the rules. Within 30 days after receipt of an application that is acceptable for filing, the Commission must act on the application.<sup>21</sup>

##### 2. Ongoing Eligibility

(Continued from previous page)

*September 22 Notice* who wished to have their comments considered herein to refile the comments in this proceeding. See *Notice* at ¶ 2 and n. 4.

<sup>16</sup> The petition was filed on September 30, 1997, and amended on March 18, 1998. On April 21, 1998, the Commission gave public notice of the filing of the petition and amendment and sought public comment. *Public Notice* (No. 82996), "Petition for Rulemaking filed for 'Class A' TV Service" (RM-9260), April 21, 1998.

<sup>17</sup> 47 U.S.C. § 336(f)(1)(A). These regulations must be in place by March 28, 2000.

<sup>18</sup> 47 U.S.C. § 336(f)(1)(B). The CBPA directed that this notice be sent within 30 days of the date of enactment. On December 13, 1999, the Mass Media Bureau issued a *Public Notice* informing the public of the statute and the eligibility requirements. *Public Notice*, "Mass Media Bureau Implements Community Broadcasters Protection Act of 1999," (*rel.* December 13, 1999). The Commission has also mailed to every LPTV licensee a "Statement of Eligibility for Class A Low Power Television Station Status." Congress directed licensees intending to convert to Class A status to complete the statement and return it to the Commission by January 28, 2000.

<sup>19</sup> More than 1,700 certifications of eligibility have been filed with the Commission.

<sup>20</sup> 47 U.S.C. § 336(f)(1)(B).

<sup>21</sup> 47 U.S.C. § 336(f)(1)(C).

10. Background. Although the Act provides clear guidance on the time within which a licensee is entitled to file an application, and thus to start the clock for Commission action on the application, it does not address the specific question whether the Commission may continue to accept applications more than 30 days after our adoption of final rules. Section (f)(1)(B) of the statute states that licensees intending to seek Class A designation “shall” submit a certification of eligibility within 60 days after the date of enactment of the Act.<sup>22</sup> Section (f)(2)(A) lists the eligibility requirements for Class A status.<sup>23</sup> However, Section (f)(2)(B) of the statute gives the Commission discretion to determine that the public interest, convenience and necessity would be served by treating a station as a qualifying LPTV station, or that a station should be considered to qualify for such status for other reasons, even if it does not meet the Section (f)(2)(A) requirements.<sup>24</sup> Section (f)(1)(C) provides that consistent with the requirements set forth in Section (f)(2)(A), a licensee “may” submit an application for Class A designation within 30 days after the Commission adopts final rules in this docket. In the Notice, we asked commenters to address whether the statute permits the Commission to continue to accept applications to convert to Class A after the 30 day period expires. In addition, presuming we have statutory authority to permit the filing of Class A license applications beyond that 30 day period, we asked commenters to discuss whether we should, as a matter of policy, allow LPTV stations to do so.

11. Decision. We believe that the basic purpose of the CBPA was to afford existing LPTV stations a window of opportunity to convert to Class A stations. Therefore, we will not accept applications from LPTV stations that did not meet the statutory criteria and that did not file a certification of eligibility by the statutory deadline, absent compelling circumstances. To be eligible for a Class A license, an LPTV station must go through several steps. First, it must have filed a certification of eligibility within 60 days of the enactment of the CBPA. Second, the certification of eligibility must be approved by the Commission. Third, it must file an application for a Class A license, as we determine below, within 6 months from the effective date of the Class A rules. And fourth, that license must be granted. The first stage of this process has already ended; those potential applicants who seek Class A status must have already filed their certifications of eligibility.

12. Some commenters asked that we expand the initial group of eligible LPTV stations beyond those who filed their certification in a timely manner. We decline to expand the eligible class in that way. We agree with the commenters who argue that for the purposes of conversion of the current class of stations, the statute clearly set forth a time frame within which licensees must file Class A certifications.<sup>25</sup> As expressed by the Association of Local Television Stations, Inc. (ALTV), the statute was designed to permit a one-time conversion of a single pool of LPTV applications that met specific criteria before the statute was enacted.<sup>26</sup> We find the statutory interpretation set forth by the Community Broadcasters

---

<sup>22</sup> The provision governing filing of Class A applications does not contain the same mandatory language. It states that licensees “may” submit an application for Class A designation within 30 days after final regulations are adopted. 47 U.S.C. § 336(f)(1)(C).

<sup>23</sup> 47 U.S.C. § 336(f)(2)(A).

<sup>24</sup> 47 U.S.C. § 336(f)(2)(B).

<sup>25</sup> See, e.g., Comments of Association of America’s Public Television Stations (APTS) at 10; Association of Local Television Stations, Inc. (ALTV) at 3; Association for Maximum Service Television, Inc. and National Association of Broadcasters (MSTV/NAB) at 15-16; Sinclair Broadcast Group, Inc. (Sinclair) at 11-12; WB Television Network (WB) at 21; AirWaves, Inc. (AirWaves) at 1.

<sup>26</sup> Comments of ALTV at 8.

Association (CBA), and others,<sup>27</sup> arguing that the statute allows ongoing eligibility, unpersuasive because the intent of Congress in enacting the CBPA was to establish the rights of a very specific, already-existing group.<sup>28</sup> The statute itself states its intent to apply to a small number of stations: "Since the creation of low-power television licensees by the Federal Communications Commission, a small number of license holders have operated their stations in a manner beneficial to the public good providing broadcasting to their communities that would not otherwise be available."<sup>29</sup> We recognize that Section (f)(2)(B) grants us discretion to determine that other LPTV stations qualify for Class A status. This discretion will be addressed in detail below.

13. The statute states that applicants "may" apply for licenses within 30 days after the adoption of final implementing rules, but gives no ultimate deadline. In order to allow sufficient time to potential applicants to prepare their applications, we will allow licensees that have filed timely certifications of eligibility to file Class A applications up to 6 months after the effective date of the rules we adopt today. We believe that establishing a 6 month period in which applications may be filed is consistent with the CBPA. The statute states that applicants "may" file license applications within 30 days from the adoption of final implementing rules. In contrast, the statute states that licensees intending to seek Class A designation "shall" file a certification of eligibility within 60 days after enactment.<sup>30</sup> We believe that the use of the word "may" in relation to applications indicates that the 30 day filing period is permissive only. Thus, applicants are not required to file within 30 days following the adoption of final rules, and we have authority to provide for a longer filing period.

14. We find that the 6 month deadline for filing a Class A application is a reasonable time frame that will afford all LPTV applicants, including those who must file displacement applications, adequate time to prepare and file their Class A applications consistent with the rules we adopt today. Where potential applicants face circumstances beyond their control that prevent them from filing within 6 months, we will examine those instances on a case-by-case basis to determine their eligibility for filing. We will not, however, accept license applications from LPTV licensees who did not timely file certifications of eligibility because we do not believe that Congress intended to create an open-ended class of potential Class A stations.

## **B. Qualifying Low-Power Television Stations**

### **1. Statutory Eligibility Criteria**

15. Section (f)(2)(A) of the CBPA provides that an LPTV station may qualify for Class A status if, during the 90 days preceding the date of enactment of the statute: (1) the station broadcast a

<sup>27</sup> CBA takes the position that the alternative eligibility criteria in the statute would be rendered a "nullity" and contrary to the intent of Congress if the opportunity to seek Class A eligibility ceased after the 60 day period for the filing of certificates of eligibility. See Comments of CBA at 3. See also Comments of Commercial Broadcasting Corp. (CBC) at 1; Community Service Television Company (Com Service) at 2; Council Tree Communications, LLC (Council ) at 2-3; Home Shopping Club (Home Shopping)) at 6; Image Video Teleproductions, Inc. (Image) at 2.

<sup>28</sup> "[I]t is not clear that all LPTV stations should be given such a guarantee [of Class A status] in light of the fact that many existing LPTV stations provide little or no original programming service." Section-by-Section Analysis at S14725.

<sup>29</sup> CBPA, § (b)(1).

<sup>30</sup> 47 U.S.C. § 336(f)(1)(B).



minimum of 18 hours per day; (2) the station broadcast an average of at least 3 hours per week of programming produced within the market area served by the station, or the market area served by a group of commonly controlled low-power stations that carry common local programming produced within the market area served by such group; and (3) the station was in compliance with the Commission's requirements for LPTV stations.<sup>31</sup> In addition, from and after the date of its application for a Class A license, the station must be in compliance with the Commission's operating rules for full-power television stations.<sup>32</sup> Alternatively, Section (f)(2)(B) of the CBPA provides that a station may qualify for Class A status if "the Commission determines that the public interest, convenience, and necessity would be served by treating the station as a qualifying low-power television station for purposes of this section, or for other reasons determined by the Commission."<sup>33</sup> This alternative eligibility will be addressed below.

## 2. Locally-Produced Programming

16. Background. We stated in the *Notice* that the statute's requirement that, during the 90 days preceding the date of enactment of the CBPA, LPTV stations must have broadcast a minimum of 18 hours per day is straightforward. The statute also prescribes that, during this period, LPTV stations must have broadcast an average of at least 3 hours per week of programming produced within the "market area" served by the station. As the statute does not define "market area," we proposed in the *Notice* to define it as the station's protected service area. We noted that we had proposed to define the Class A protected service area as the protected area now afforded LPTV stations, and asked commenters to address whether the protected service area ultimately adopted by the Commission should also be used to define "market area" in connection with the local programming criterion. With respect to a group of commonly controlled stations, we proposed to define the "market area" of such stations as the area covered by the protected service area of all stations in the commonly-owned group. We stated that we were not inclined to include repeated programming or locally produced commercials as contributing to the mandatory 3 hours of locally produced programming, and invited comment on this tentative conclusion.<sup>34</sup>

17. Decision. We will not adopt the definition of "market area" that we proposed in the *Notice*. We are persuaded to adopt a more expansive definition after reviewing the many comments, such as those of Larry Schrecongost,<sup>35</sup> that contend our proposal would be too restrictive with respect to the local production of programming. Commenters propose a number of broader alternative definitions. For example, Turnpike Television (Turnpike) contends that the definition of market area should be each station's predicted Grade B service area,<sup>36</sup> Centex Television Limited Partnership (Centex) argues for the DMA,<sup>37</sup> and CBA would expand the market area to include coverage of out-of-town events. There are several commenters, however, such as WB Television Network (WB), that support our proposed

<sup>31</sup> 47 U.S.C. § 336(f)(2)(A)(i).

<sup>32</sup> 47 U.S.C. § 336(f)(2)(A)(ii).

<sup>33</sup> 47 U.S.C. § 336(f)(2)(B).

<sup>34</sup> *Notice* at ¶ 19.

<sup>35</sup> See Comments of Larry Schrecongost (Schrecongost) at 2-3.

<sup>36</sup> See Comments of Turnpike Television (Turnpike) at 5-6. See also Comments of Airwaves at 1; CBA at 13. See also Reply Comments of CBA at 17.

<sup>37</sup> See Comments of Centex at 1. See also Comments of National Minority TV, Inc. (NRB) at 7.

definition,<sup>38</sup> but only one, Sinclair Broadcast Group, Inc. (Sinclair), argues that the market area should be even more restricted, defining the market area as the LPTV station's community of license.<sup>39</sup>

18. We instead will expand our definition of "market area" to encompass the area within the predicted Grade B contour determined by the Class A station's antenna height and power, which encloses a larger area than that of an LPTV station's protected service contour.<sup>40</sup> With respect to a group of commonly controlled stations, the market area will be the area within the predicted Grade B contours of any of the stations in the commonly owned group.

19. With respect to the local market definition, a number of commenters urge us to expand our definition of the market area to include the predicted Grade B contour, contending that it is the only reasonable and realistic definition for defining where locally originated programming would be produced. Centex argues that broadening the market area definition, rather than limiting it to the protected service area, serves the Congressional intent of rewarding and protecting LPTV stations which provide communities with locally oriented programming.<sup>41</sup> We agree. We also believe that extending the market area to encompass the Grade B contour will give stations more flexibility to provide locally oriented programming to the community within their signal range, and provide them with a more stable economic base in which to improve their commercial viability. Accordingly, we believe that the predicted Grade B contour is a more appropriate measure than our original protected contour proposal with respect to provision of locally oriented programming for the communities served by LPTV stations. We do not agree with those commenters who suggested that market should be defined even more broadly, such as the DMA.<sup>42</sup> Many LPTV stations serve areas considerably smaller than the DMA in which they are located. Moreover, some DMAs are extremely large, with the availability of even full-service stations throughout the DMA substantially dependent on cable carriage. It does not appear appropriate, therefore, to consider programming produced anywhere in the DMA to be "locally produced" for purposes of Class A stations' eligibility.

20. Some commenters are concerned about the possible conflicts between the locally produced programming requirement and the existing main studio rule, arguing that we should either consider waivers of the main studio rule<sup>43</sup> or not adopt so restrictive a definition of market area as to conflict with the rule.<sup>44</sup> As discussed below in this *Report and Order*, we have decided to require Class A stations to maintain a main studio located within their predicted Grade B contours. We have also decided to grandfather all main

<sup>38</sup> See Comments of WB at 24. See also Comments of Alaskan Choice Television (Alaskan) at 2; Sherjan Broadcasting Company (Sherjan) at 3-4.

<sup>39</sup> See Comments of Sinclair Broadcast Group, Inc. (Sinclair) at 10.

<sup>40</sup> See discussion of Class A station's antenna height, power, and protected service contour, below.

<sup>41</sup> See Comments of Centex at 1.

<sup>42</sup> We note that the predicted Grade B signal contour of an LPTV station, which typically would not extend beyond 20-25 miles, is generally smaller than the DMA, which normally encompasses several counties. In some cases, different communities within a DMA might be served by different Class A stations. The LPTV service was tailored to meet the needs of local communities, as opposed to such wider areas as would be covered in a DMA.

<sup>43</sup> 47 C.F.R. § 1125.

<sup>44</sup> See Comments of W.B. St. Clair (St. Clair) at 2; WatchTV, Inc. (WatchTV) at 2.

studio locations now in existence and operated by LPTV stations. To avoid any conflicts between the local market definition and our main studio rule, we will consider programming produced at the main studio of such grandfathered Class A stations to be locally produced programming even though the main studio is located outside the stations' Grade B contours.

### 3. Operating Requirements

21. Background. To qualify for Class A status, the CBPA provides that, during the 90 days preceding enactment of the statute, a station must have been in compliance with the Commission's requirements for LPTV stations.<sup>45</sup> In addition, beginning on the date of its application for a Class A license and thereafter, a station must be "in compliance with the Commission's operating rules for full-power stations."<sup>46</sup> We stated in the *Notice* our intent to apply to Class A applicants and licensees all Part 73 rules, except for those which are inconsistent with the manner in which LPTV stations are authorized or the lower power at which these stations operate. Thus, for example, we proposed that Class A stations comply with the Part 73 requirements for informational and educational children's programming and the limits on commercialization during children's programming, the political programming rules, and the public inspection file rule. We stated that we intended to exempt Class A licensees only from Part 73 rules that clearly cannot apply, either due to technical differences in the operation of low-power and full-power stations, or for other reasons. For example, we noted that some Class A stations might not be able to comply with the requirement of Section 73.685(a) that stations provide a specified level of coverage to their community of license. We requested comment on this provision and any other Part 73 requirement that, for technical or other reasons, either cannot apply to Class A stations or must be modified with respect to such stations. We also invited comment on whether the Commission should group the new Class A service under the Part 73 rules, governing full-service facilities, or the Part 74 rules, governing low-power stations.

22. We also stated our belief in the *Notice* that the current power limits in the LPTV rules should apply to Class A. We noted that further increases could hinder the implementation of digital television and could limit the number of Class A stations that could be authorized. Finally, we sought comment on whether to require Class A stations to provide some requisite level of coverage over their community. We noted that such stations may not operate with sufficient power to serve large communities, and that we had reservations about increasing power limits for Class A stations beyond the current limits in the LPTV service.<sup>47</sup>

23. Decision. We will adopt our proposal to apply to Class A applicants and licensees all Part 73 regulations except for those that cannot apply for technical or other reasons. We believe that this course of action is most consistent with the language of the statute, which provides that from and after the date of an application for a Class A license, LPTV stations must comply with the operating rules for full-power television stations to be eligible for Class A status. Most commenters that addressed this issue agree that Class A stations should be required to comply with most Part 73 obligations except for those that are clearly inappropriate or inapplicable.<sup>48</sup>

<sup>45</sup> 47 U.S.C. § 336(f)(2)(A)(i)(III).

<sup>46</sup> 47 U.S.C. § 336(f)(2)(A)(ii).

<sup>47</sup> See *Notice* at ¶¶ 54-56.

<sup>48</sup> See, e.g., Comments of CBA at 13-17 (would exempt Class A stations only from certain ownership, principal city coverage, filing fee, and call sign requirements); Fox Television Stations, Inc. a/k/a Fox Broadcasting Company (Fox) at 13-15 (would exempt Class A stations from the Part 73 provisions addressing the (continued....))

24. The Part 73 requirements that we will apply to Class A applicants and licensees are set forth in Appendix A. Among other Part 73 obligations, we will require that Class A applicants and licensees comply with the following: our rules governing informational and educational children's programming and the limits on commercialization during children's programming; the requirement to identify a children's programming liaison at the station and to provide information regarding the "core" educational and informational programming aired by the station to publishers of television program guides; the requirement to place in their file the quarterly forms 398; the political programming rules; the public inspection file rule, including the requirement to prepare and place in the public inspection file on a quarterly basis an issues/programs list; and station identification requirements. We will require Class A stations to comply with the Emergency Alert System (EAS) rules applicable to full-service television stations; for example, they will be required to have and operate a digital EAS encoder and perform the weekly and monthly EAS tests required of full-service stations.<sup>49</sup> As provided in Section (f)(1)(A)(ii) of the CBPA, Class A licensees must also continue to meet the requirements for a qualifying low-power station in order to continue to be accorded Class A status.<sup>50</sup>

25. We will require Class A applicants and licensees to maintain a main studio. As Class A stations will be low-power and thus serve a smaller area than most full-service stations, we do not believe it is appropriate to permit Class A stations to locate their main studio within the principal community contour of any station serving that market, or 25 miles from the center of its community of license, as we permit for full-service stations.<sup>51</sup> Instead, we will require Class A stations to locate their main studios within the station's Grade B contour, as determined pursuant to the Commission's rules.<sup>52</sup> This will ensure that newly created main studios are more accessible to the population that receives the station's programming. We will grandfather all main studios now in existence and operated by LPTV stations. We do not believe it is necessary to require these stations to change the location of their existing studio, or build a new studio, to comply with our Class A rules. We will grandfather those main studios for purposes of our Class A main studio rule adopted in this *Report and Order*.

26. For purposes of our Class A rules, we will also modify a number of other requirements applicable to full-service television broadcast stations, including: (1) minimum hours of operation of 18 hours per day, as required by the statute; (2) grandfather the use of LPTV broadcast transmitters; and (3)

(Continued from previous page) \_\_\_\_\_

table of allotments, minimum distance separations, and power and antenna height requirements, and would reduce the minimum field strength requirements for community coverage to correspond with the lower power levels at which Class A stations would operate); Sinclair at 10 (Class A stations must be subject to all Part 73 rules, such as children's television programming requirements, main studio rule, public inspection file rules, and political programming rules); WB at 24-27 (Class A stations must comply with all Part 73 requirements, including children's educational programming requirements and commercial limits, and the political programming, public inspection file, and main studio rules).

<sup>49</sup> The EAS rules are given in Part 11 of the Commission's Rules. LPTV stations, except those that operate as television translator stations, are required to have a digital decoder. At the present time, manufacturers of EAS equipment produce only integrated encoder/decoder devices. Therefore, as a practical matter, we believe most LPTV stations already have a digital encoder.

<sup>50</sup> 47 U.S.C. § 336(f)(1)(A)(ii).

<sup>51</sup> See 47 C.F.R. § 73.1125.

<sup>52</sup> The Grade B field strength values are defined in 47 C.F.R. § 73.683(a) as 47 dBu for channels 2-6, 56 dBu for channels 7-13, and 64 dBu for channels 14-69. The method of predicting the location of the Grade B contour is specified in 47 C.F.R. § 73.684.

permit Class A stations to operate without a carrier frequency offset. We will permit qualified Class A station licensees to continue to operate their existing LPTV transmitters, provided these transmitters do not cause interference due to excessive emissions on frequencies outside of the station's assigned channel. We will require Class A stations seeking facilities increases under the more inclusive definition of "minor" changes we are adopting for these stations to specify operation on an offset frequency and to operate with a transmitter meeting the required frequency tolerance for offset operation.

27. We will not apply to Class A facilities the following provisions of Part 73: (1) the NTSC and DTV Tables of Allotments (sections 73.606 and 73.607); (2) mileage separations (section 73.610); and (3) minimum power and antenna height requirements (section 73.614). As qualifying LPTV stations are not governed by mileage separations, do not have allotted technical parameters, and will not have a community coverage requirement, these provisions of Part 73 will not apply to Class A. LPTV stations are not subject to minimum power and antenna height requirements under Part 74, and we will not impose any such requirements on Class A stations.

28. We will also exempt Class A facilities from the principal city coverage requirement of section 73.685(a) of the rules. At this time, we believe that it is unnecessary to require Class A stations to provide a requisite level of coverage over their community. Although LPTV stations are associated with a specific community on their license application, they are not subject to any requirement to provide a specified level of coverage to that community. As we indicated in the *Notice*, those Class A stations that are intended to serve an entire community that is otherwise unserved or underserved have ample incentive to provide service to the residents of the whole of that community without a mandatory requirement to do so.<sup>53</sup> Other stations may intend to serve only a narrow segment of their community. In view of the lower power levels at which LPTV stations now operate and at which Class A facilities will continue to operate, and the fact that in many cases these stations provide programming to areas where a higher power station could not be accommodated in the Table of Allotments, we do not believe a minimum coverage requirement is appropriate. The commenters that addressed this issue generally agreed that no new coverage requirement should be imposed on existing LPTV stations seeking Class A designation.<sup>54</sup> If the circumstances regarding operation of Class A stations change in the future, including, for example, the permitted power levels of such facilities, we reserve the right to revisit the issue of minimum coverage requirements at that time.

29. As we proposed in the *Notice*, we will also maintain for now the current LPTV maximum power levels for Class A stations.<sup>55</sup> We believe that these power levels are sufficient to preserve existing service, which is consistent with Congress' objective underlying the CBPA.<sup>56</sup> While many commenters

<sup>53</sup> See *Notice* at ¶ 55.

<sup>54</sup> CBA argues that, at a minimum, every existing LPTV station should be grandfathered under any principal city coverage requirement the Commission may adopt. For new stations and Class A stations seeking to change their community of license, CBA states "it may be appropriate" to require that the Class A station protected service contour encompass a portion of the community of license. See Comments of CBA at 15-16. WB would require that a Class A station's protected signal contour cover the same or a greater percentage of the LPTV station's community of license as it did on November 29, 1999. See Comments of WB at 35.

<sup>55</sup> See 47 C.F.R. § 74.735.

<sup>56</sup> According to Congress, the purpose of the CBPA is to "ensure that many communities across the nation will continue to have access to free, over-the-air low-power television (LPTV) stations, even as full-service television stations proceed with their conversion to digital format." Section-by-Section Analysis at S 14724 (emphasis added).

urged us to permit Class A stations to increase power above the limits currently applicable to LPTV stations,<sup>57</sup> we will not adopt such a course at this time. Congress emphasized in the CBPA the importance of balancing the needs of LPTV licensees against the needs of full-service stations as they transition to a digital format. We believe that further power increases at this time could hinder the implementation of digital television, as well as limit the number of Class A stations that could be authorized. Moreover, we recently increased power levels for LPTV stations in our DTV *Sixth Report and Order*,<sup>58</sup> and have not yet opened a filing window to permit stations to modify their facilities to take advantage of this power increase.

30. Several commenters propose that we require Class A licensees to certify annually their continued compliance with the Class A eligibility criteria and with applicable Part 73 requirements.<sup>59</sup> As we noted above, in addition to requiring Class A applicants and licensees to comply with the operating requirements for full-power television stations, the CBPA also requires that Class A licensees continue to meet the eligibility criteria established for a qualifying low-power station in order to retain Class A status.<sup>60</sup> We will not adopt an annual certification or reporting requirement for Class A stations. We do not have such a general requirement for other television broadcast stations, and see no need to treat Class A stations differently. However, like other Part 73 licensees, we will require Class A licensees to certify compliance with applicable FCC rules at time of renewal. In addition, as in the case of other Part 73 licensees, Class A renewal applications will be subject to petitions to deny. Finally, we will require licensees seeking to assign or transfer a Class A license to certify on the application for transfer or assignment of license that the station has been operated in compliance with the rules applicable to Class A stations. We will also require Class A assignees and transferees to certify on their portion of the transfer or assignment application that they will operate the station in accordance with these rules.

31. We will place our rules governing the new Class A television service under Part 73. As Class A stations must comply with the operating rules for full-service stations, which are found in Part 73, it appears most logical to group the rules for Class A service with the full-service broadcast rules. LPTV

---

<sup>57</sup> CBA argues that the FCC should permit increased power levels above the current Part 74 limits particularly for high-band VHF stations. CBA also states that whatever ERP limits that do apply should apply only in the horizontal plane, allowing additional power to be directed at downward elevations. Comments of CBA at 22. We disagree that the ERP limits should apply strictly in the horizontal plane. The LPTV rules establish limits for a station's maximum peak effective radiated power. Allowing power levels beyond those specified in the LPTV rules in connection with antenna beam tilt would increase the potential for causing interference to full-service stations operating near a Class A station; for example, stations operating on the 2<sup>nd</sup>, 3<sup>rd</sup> or 4<sup>th</sup> adjacent channels. MSTV/NAB, National Translator Association (NTA), Fox, and WB oppose permitting increased power for Class A. See Comments of MSTV/NAB at 14 n. 43; NTA at 5; Fox at 13; WB at 34.

<sup>58</sup> *Sixth Report and Order, In the Matter of Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, MM Docket No. 87-268, 12 FCC Rcd 14588, 14605-06 (1997) ("*Sixth Report and Order*").

<sup>59</sup> See, e.g., Comments of WB at 27 (Class A stations should be required to certify annually their continued compliance with the local programming requirement, the minimum operating requirement, and all applicable provisions of Part 73); Sinclair at 10 (FCC should adopt reporting requirements for Class A stations to ensure they are in compliance with the operating rules for full-service stations from the date of their application for a Class A license).

<sup>60</sup> 47 U.S.C. § 336(f)(1)(A)(ii).

stations that are not eligible for or choose not to apply for Class A status will continue to be governed by Part 74 of our rules.<sup>61</sup>

#### 4. Alternative Eligibility Criteria

32. Background. The CBPA grants the Commission authority to establish alternative eligibility criteria for LPTV stations seeking Class A designation if "the Commission determines that the public interest, convenience, and necessity would be served by treating the station as a qualifying low-power television station for purposes of this section, or for other reasons determined by the Commission."<sup>62</sup> In the *Notice*, we sought comment on (1) how far an LPTV station may deviate from the statutory eligibility criteria and still be considered eligible for Class A status, and (2) whether we should establish a different set of criteria for certain types of LPTV stations, such as foreign language stations or TV translators.

33. Decision. Congress mandated three Class A eligibility qualifications in the CBPA. For the 90 days prior to enactment of the CBPA, an applicant must have (1) broadcast a minimum of 18 hours per day, (2) broadcast an average of at least 3 hours per week of programming produced within the market area served by the station, and (3) been in compliance with Commission requirements of LPTV stations. We will allow deviation from the strict statutory eligibility criteria only where such deviations are insignificant or when we determine that there are compelling circumstances, and that in light of those compelling circumstances, equity mandates such a deviation. Examples of such compelling circumstances include a natural disaster or interference conflict which forced the station off the air during the 90 day period before enactment of the CBPA.

34. We will not establish a different set of criteria for foreign language stations that do not meet the local programming criteria. We recognize the valuable service provided by foreign language stations, but conclude that Congress' intent was to preserve the service of a small class of existing LPTV stations that were providing local programming.<sup>63</sup> We appreciate the comments submitted by groups with foreign language programming that encourage us to allow such programming to meet the statutory requirement.<sup>64</sup> We conclude, however, that foreign language stations should have the same eligibility requirements as any other potential Class A station.<sup>65</sup>

35. We will not adopt separate eligibility criteria for translator stations under the CBPA, as requested by the National Translator Association (NTA).<sup>66</sup> The statute limits eligibility to LPTV stations that produce local programming and can meet the operating rules applicable to full-service stations.<sup>67</sup> We

<sup>61</sup> Nothing in this *Report and Order* is intended to affect a Class A LPTV station's eligibility to qualify for mandatory carriage under 47 U.S.C. § 534.

<sup>62</sup> 47 U.S.C. § 336(f)(2)(B).

<sup>63</sup> See Section-by-Section Analysis at S14725.

<sup>64</sup> See, e.g., Comments of Council at 3-4; Comments of Entravision Holdings, LLC (Entravision) at 4; Comments of K Licensee, Inc. (K Licensee) at 2-4; Comments of Paging Systems, Inc. (Paging) at 5.

<sup>65</sup> See, e.g., Comments of Nicolas Communications Corporation (Nicolas) at 11.

<sup>66</sup> See Comments of NTA at 2.

<sup>67</sup> "Congress has recognized that 'LPTV stations are distinct from so called 'translators.' " Whereas LPTV stations typically offer original programming, translators merely amplify or 'boost' a full-service television (continued....)

recognize, however, the extremely valuable service that translators provide, often representing the only source of free, over-the-air broadcasting in rural areas. Indeed, we expressly asked about according translators Class A status in the September 22 Notice. While that proceeding has been terminated, we still believe that this is an issue that should be examined. Thus, we will institute a new proceeding seeking comment on whether translators should be permitted to qualify for some form of primary status, and what the eligibility requirements for such protection should be.

### C. Class A Interference Protection Rights and Responsibilities

#### 1. Class A Protected Service Area

36. Background. The CBPA requires the Commission to preserve the service areas of low power television licensees pending the final resolution of Class A applications.<sup>68</sup> In the *Notice*, the Commission proposed to protect the service contours of analog Class A stations and certified eligible LPTV stations to the field strength values that define LPTV protected signal contours.<sup>69</sup> The *Notice* also sought comment on whether protected contour values for digital Class A stations should be based on the field strength values that define DTV noise-limited contours or other field strength values better suited for this purpose.<sup>70</sup>

37. Decision. We will adopt the proposal in the *Notice* with respect to analog stations and define the following protected signal contour values for these stations: 62 dBu for channels 2-6, 68 dBu for channels 7-13, and 74 dBu for channels 14 and above, as calculated using the Commission's F(50,50) signal propagation curves. CBA and several LPTV station operators urge an expanded Class A protected contour, such as the TV Grade B contour.<sup>71</sup> We recognize, as these commenters point out, that LPTV stations can be viewed in the areas between their protected contour and the Grade B contour of their facilities, just as the signals of NTSC stations are often viewed beyond their Grade B contours.<sup>72</sup> In enacting the CBPA, Congress equated the service areas to be preserved with the LPTV signal contours, which have always been defined by the above field strength values.<sup>73</sup> We agree with Fox that expanding

(Continued from previous page)

station's signal into rural or mountainous regions adjacent to the station's market." Section-by-Section Analysis at S 14726, n. 28.

<sup>68</sup> 47 U.S.C. § 336(f)(1)(D).

<sup>69</sup> 47 C.F.R. § 74.707(a) Most LPTV interference requirements limit the strength of a station's signal at another station's protected service contour. The service contour is defined by a field strength that is protected against interference. The protected signal contour is the locus of points where that field strength is predicted to occur. The contour-defining field strength, together with an LPTV station's power and antenna height, determine the geographic extent of its protected service. For a given facility, as long as that field strength is large enough to be received, the station's protected area would increase as the defining field strength is set to smaller dBu values.

<sup>70</sup> The DTV noise-limited contour values are: 28 dBu for channels 2-6, 36 dBu for channels 7-13 and 41 dBu for channels 14-69. See 47 C.F.R. § 73.622(e).

<sup>71</sup> See Comments of CBA at 7 (advocating greater protection from new prohibited signal contour overlap). See also Comments of Commercial Broadcasting Corporation at 2; Equity Broadcasting Corporation (Equity) at 5; Turnpike at 2; Martinez Group (Martinez) at 2; Sherjan at 3; and Airwaves, Inc. at 1.

<sup>72</sup> The Grade B field strength values are defined in 47 C.F.R. § 73.683(a) as 47 dBu for channels 2-6, 56 dBu for channels 7-13 and 64 dBu for channels 14-69.

<sup>73</sup> See Section-by-Section Analysis at S14725.



contour protection for Class A stations would be inconsistent with the intent of the CBPA to preserve existing service.<sup>74</sup> Also, as noted by the Association of Federal Communications Consulting Engineers (AFCCE), this would be likely to create new situations of prohibited contour overlap between LPTV stations where none currently exist.<sup>75</sup> More than 2,000 LPTV stations have been engineered to fit into the broadcast landscape on the basis of protection to the LPTV service contours.<sup>76</sup> The LPTV service is now mature, and service expectations are well established. We do not want to upset the balance that has been achieved between service and interference considerations. For these reasons, we will apply the LPTV service contour definitions to Class A stations as the basis for interference protection.

38. The above considerations are also relevant to our choice of protected signal contours for digital Class A stations. Some commenters favor use of the DTV noise-limited signal contours for this purpose, which are comparable to NTSC Grade B contours.<sup>77</sup> Use of these values would, in effect, expand protection for digital Class A stations, compared to that for analog Class A stations, whose protected contours are comparable to NTSC Grade A contours.<sup>78</sup> Using these values would also create situations where Class A digital service contours would overlap with the interference-limited contours of analog LPTV and Class A stations. This "built-in" interference would occur to a lesser extent if the Class A digital protected contours were geographically smaller. Also, digital conversion opportunities for Class A and other services would be precluded to a lesser extent through the use of digital contour values more comparable to the Class A analog values. We will adopt the protected contour values suggested by the AFCCE, du Treil, Lundin & Rackley (du Treil), and the Society of Broadcast Engineers (SBE): 43 dBu for channels 2-6, 48 dBu for channels 7-13 and 51 dBu for channels 14-51.<sup>79</sup> These values reflect the differences between analog LPTV protected contours and NTSC Grade B contours. For example, the analog LPTV and Grade B values for UHF stations are 74 dBu and 64 dBu, respectively - a 10 dB difference. This difference (or scaling factor) is added to the 41 dBu DTV noise-limited field strength value to obtain a protected contour of 51 dBu for UHF digital Class A stations. In a future proceeding, we will consider rules for permitting on-channel digital conversion for TV translator and non-Class A LPTV stations. We may wish to revisit the issue of Class A digital protected contour values at that time.

## 2. Time Protection Begins

39. Background. Section (f)(1)(D) of the CBPA requires the Commission to preserve the service areas of low-power television licensees pending the final resolution of a Class A application.<sup>80</sup> In the *Notice*, we proposed to preserve the service area of LPTV licensees from the date the Commission

<sup>74</sup> See Reply Comments of Fox at 4.

<sup>75</sup> See Comments of the Association of Federal Communications Consulting Engineers (AFCCE) at 1. See also the comments of St. Clair at 1 (stating that changing the protected contour definition for Class A stations would create confusion).

<sup>76</sup> Some stations operate with facilities just sufficient to protect other LPTV or TV translator stations.

<sup>77</sup> See Comments of MSTV/NAB at 24 and Technical Supplement to Reply Comments of CBA at 1.

<sup>78</sup> NTSC Grade A contour values are defined in 47 C.F.R. § 73.683(a) as 68 dBu for channels 2-6, 71 dBu for channels 7-13 and 74 dBu for channels 14-69.

<sup>79</sup> See Comments of the AFCCE at 1; du Treil, Lundin & Rackley (du Treil) at 1-2; the Society of Broadcast Engineers (SBE) at 5.

<sup>80</sup> 47 U.S.C. § 336(f)(1)(D).

receives an acceptable certification of eligibility for Class A status; that is, a certification that is complete and that, on its face, indicates eligibility for Class A status pursuant to the eligibility criteria established by statute and any other criteria ultimately approved in this proceeding. Thus, we proposed to protect the service area of an LPTV station, to the extent provided in the CBPA and our rules, from the date a certification for eligibility is filed with the Commission, as long as the certification is ultimately granted by the Commission.

40. Decision. We will adopt our proposal to commence preservation of the service area of LPTV stations from the date of receipt of an acceptable certification of eligibility filed pursuant to section (f)(1)(B) of the CBPA. As we stated in the *Notice*, this timing appears most consistent with the CBPA's dual certification and application scheme for Class A status, despite the reference in the statute to the pendency of an application, as opposed to a certification, to trigger contour protection. Senator Conrad Burns, a sponsor of the CBPA in the Senate, introduced a statement on the Senate floor clarifying the issue of when an LPTV station's contour should be preserved. He stated in part: "It is clearly our intent that as soon as the Commission is in receipt of an acceptable certification notice, it should protect the contours of this station until final resolution of that application."<sup>81</sup>

41. We disagree with MSTV/NAB that protection should begin from the time a Class A application is filed, rather than the date of filing of a certification of eligibility. This reading of the statute would render the separate certification of eligibility requirement meaningless. MSTV/NAB argue that protecting the more than 1700 eligibility certifications filed by the January 28, 2000 deadline<sup>82</sup> would "paralyze" the Commission.<sup>83</sup> However, more than a third of these certifications, on their face, do not comply with the eligibility criteria established in the CBPA and our rules adopted herein. Included in this group are certifications submitted by translator station licensees and permittees of unbuilt LPTV stations. Such licensees and permittees do not meet the eligibility standards of the CBPA and our rules. Accordingly, their certifications are not acceptable and will be dismissed. Similarly deficient are those certifications filed after the January 28, 2000 deadline and those certifications submitted by LPTV licensees whose stations aired no locally produced programming during the entire 90-day period preceding enactment of the CBPA. They too will be dismissed.

42. As discussed above, the CBPA permits the Commission to establish alternative criteria for Class A eligibility if it determines that the public interest, convenience and necessity would be served thereby, or for other reasons.<sup>84</sup> Thus, there may be instances in which a certification of eligibility is filed but the corresponding Class A application may not be granted because the alternative eligibility showing cannot be approved. We also note that a Class A application could be denied if a certification of eligibility were later determined to be incorrect. In situations where the Commission determines that a Class A certification of eligibility or Class A application may not be granted, protection of the service contour of that facility will cease from the date the Commission determination is made.

---

<sup>81</sup> See District of Columbia Appropriations Act, 2000 –Conference Report Resumed, Congressional Record of November 19, 1999 at p. S14989. With respect to LPTV stations operating on channels outside the core that seek Class A status, we will commence contour protection for those stations upon issuance of a construction permit for an in-core channel. See *infra*.

<sup>82</sup> See *Statements of Eligibility for Class A Low Power Television Status Tendered for Filing*, Public Notice (rel. Feb. 8, 2000).

<sup>83</sup> See Reply Comments of MSTV/NAB at 13.

<sup>84</sup> 47 U.S.C. § 336(f)(2)(B).

### 3. Protection of Pending NTSC TV Applications and Facilities

43. **Background.** The CBPA requires that the Commission preserve the service areas of LPTV stations pending the final resolution of a Class A application.<sup>85</sup> As discussed above, we interpret that provision to require protection from the date of filing of an acceptable certification of eligibility for Class A status. With respect to NTSC facilities, Section (f)(7)(A) of the CBPA provides that the Commission may not grant a Class A license, nor approve a modification of license, unless the applicant shows that the proposed Class A station will not cause interference "within the predicted Grade B contour (as of the date of enactment of the ... [CBPA] ...) or as proposed in a change application filed on or before such date) of any television station transmitting in analog format."<sup>86</sup> We invited comment in the *Notice* on how to interpret the phrase "transmitting in analog format." We indicated that we were inclined to include among the NTSC facilities that Class A stations must protect both stations actually transmitting in analog format and those that have been authorized to construct facilities capable of transmitting in analog format (*i.e.*, construction permits). Under this interpretation, pending applications for new NTSC full-service stations would not be protected, including applications of successful bidders in the September 1999 broadcast auction that have not been granted a construction permit. In addition, there are still pending before the Commission applications and channel allotment rule making petitions involving channels 60 - 69 and requests for waiver of the 1987 TV filing freeze, which may account for approximately 180 potential new NTSC stations. We indicated in the *Notice* that these applications and allotment proposals would not be protected under this interpretation of the CBPA, nor would any modified allotment proposals for channel or other technical changes or any applications for modification of facilities filed after November 29, 1999.<sup>87</sup>

44. **Decision.** Upon further reflection, and after careful consideration of the comments, we have reconsidered our proposal regarding interpretation of the interference protection that must be accorded by Class A to pending NTSC applications. Instead, we will adopt the proposal similar to that advanced by CBA in its comments to require Class A stations to protect both existing analog stations and full-service applicants that have completed all processing short of grant necessary to provide a reasonably ascertainable Grade B contour.<sup>88</sup> We believe this proposal is both equitable and consistent with the CBPA. Specifically, we will require Class A applicants to protect the predicted Grade B contour (as of November 29, 1999, or as proposed in a change application filed on or before that date) of full-power analog stations licensed on or before November 29, 1999. We will also require Class A applicants to protect the Grade B contour of full-power analog facilities for which a construction permit was authorized on or before November 29, 1999. Finally, we will require Class A applicants to protect the facilities proposed in any application for full-power analog facilities that was pending on November 29, 1999, that had completed all processing short of grant as of that date, and for which the identity of the successful applicant is known. The applications in this latter category are post-auction applications, applications proposed for grant in pending settlements, and any singleton applications cut off from further filings. We will not require Class A applicants for initial Class A authorization to protect pending rule making petitions for new or modified NTSC channel allotments or full-service applications that were not accepted for filing by November 29, including most pending television freeze waiver applications.

<sup>85</sup> 47 U.S.C. § 336(f)(1)(D).

<sup>86</sup> 47 U.S.C. § 336(f)(7)(A)(i).

<sup>87</sup> See *Notice* at ¶ 27-28.

<sup>88</sup> See Comments of CBA at 9.

45. We believe that protecting these categories of pending NTSC applications is consistent with both the language of the CBPA and the underlying intent of Congress. Section (f)(7)(A)(i) requires Class A applicants to show that they “will not cause” interference within “the predicted Grade B contour (as of the date of the enactment of [CBPA]...) of any television station[s] transmitting in analog format.” It is not immediately clear from the statutory language whether the station entitled to interference protection must have been “transmitting in analog format” as of the date of enactment of the CBPA in 1999, or as of the date it would experience the interference.<sup>89</sup> We believe that a sound interpretation of the statutory language, in light of the considerations that follow, is that it refers to the nature of the service entitled to protection (*i.e.*, analog) rather than to its operational status on the date of enactment of the CBPA. Therefore, the analog station could be licensed, one for which an application is currently pending, or one for which a construction permit has been granted but which is not yet built. The statute does require that analog stations entitled to protection must have had a “predicted Grade B contour (as of the date of the enactment of the [CBPA], or November 1, 1999, whichever is later, or as proposed in a change application filed on or before such date).”<sup>90</sup> A station does not have to be operating, however, to have a “predicted grade B contour” as described in Section (f)(7)(A)(i). A station proposed in a pending application or an unbuilt station with an outstanding construction permit may also have a predicted Grade B contour. Indeed, the clause referring to the predicted Grade B contour specifically includes predicted Grade B contours proposed in change applications filed before the specified date. Thus, this section explicitly contemplates that interference protection by Class A stations may extend to at least some analog stations that are not yet operating, but nonetheless had predicted Grade B contours as of the date specified in the statute. It would make no sense to protect pending change applications and licensed stations but not outstanding construction permits, which are closer to operational status. We believe that Congress included the reference to change applications to make it clear that those are entitled to protection, rather than to suggest that other applications or construction permits are not similarly protected.

46. Under this reading of the statute, Section (f)(7)(A)(i) requires Class A applicants and licensees to protect “the predicted Grade B contour (as of ... [November 29, 1999], or as proposed in a change application filed on or before such date)” of analog facilities. Thus, Class A stations must protect the predicted Grade B contour of analog stations licensed or granted a construction permit as of November 29, 1999, as well as of facilities proposed in certain pending analog applications. We note that the phrase “predicted Grade B contour” is singular. We believe that the best interpretation of this phrase, as modified by the parenthetical in Section (f)(7)(A)(i), is that it limits the facilities proposed in applications pending as of November 29, 1999 that must be protected by Class A stations to those for which there is a single, reasonably ascertainable predicted Grade B contour as of that date. These applications consist of post-auction applications, applications proposed for grant in pending settlements, and any singleton applications cut off from further filing. The applications in each of these categories have progressed through the cut off stage and the identity of the successful applicant in each case has been determined. Class A applicants thus can identify a single predicted Grade B contour with respect to these applications for which protection must be afforded and are not required to show that they will not interfere with multiple, hypothetical contours that may not turn out to be actual contours, if the applicant in question does not ultimately receive the station license.

47. Moreover, we believe that this interpretation of the statute best reflects the intent of Congress as expressed in the overall statutory scheme. Under the interpretation we proposed in the Notice,

<sup>89</sup> The legislative history merely repeats the phrase “station transmitting in analog format,” without additional explanation. See Section-by-Section Analysis at S 14725.

<sup>90</sup> 47 U.S.C. § 336(f)(7)(A)(i).

Class A applicants and licensees would not have been required to protect post-auction applications for which a construction permit had not been issued as of the date of enactment of the CBPA. There is no language in the statute or the legislative history that suggests that Congress intended a result so dramatically inconsistent with its grant of auction authority to the Commission in the Balanced Budget Act of 1997.<sup>91</sup> As the Supreme Court recently noted, it is a "fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme."<sup>92</sup> The Court further stated that "the meaning of one statute may be affected by other Acts . . ."<sup>93</sup> We agree with CBA that, in securing the future of qualified LPTV stations, Congress did not intend to disrupt the rights and long-settled expectations of applicants for pending NTSC facilities that have prosecuted their applications past the cut off stage and to the point that a final successful applicant has been identified. Instead, Congress intended to place Class A licensees on roughly even footing with full-service licensees, while protecting the DTV transition. These pending cut-off NTSC applications are protected against new full-service analog applicants, and therefore should be protected by Class A applicants

48. We believe making these distinctions is consistent with Congress' intent because requiring Class A applicants to protect applications that have progressed through the cut-off stage strikes an appropriate balance between the rights of pending applicants versus the interests of LPTV stations seeking primary status. Applicants that have prosecuted their applications through the cut off stage and to the point that the identity of the successful applicant is known have in most cases invested substantial resources in filing and prosecuting their applications. Most of these applications have been pending for some time, and LPTV stations affected by the facilities proposed in these applications have long been on notice that they would ultimately be displaced or be required to reduce their facilities. Requiring Class A applicants to protect applications that had progressed through this stage by November 29, 1999 is both equitable and a reasonable reading of the CBPA.

#### 4. New DTV Service

49. Background. Section (f)(7)(A)(ii)(III) of the CBPA requires Class A applicants to protect "the digital television service areas of stations subsequently granted by the Commission prior to the filing of a Class A application."<sup>94</sup> We stated in the *Notice* that we interpreted this provision not to apply to applications for initial Class A licenses that have filed acceptable certifications of eligibility, but rather to applications seeking to modify Class A facilities, such as requests for power increases.<sup>95</sup> We noted that

<sup>91</sup> See Balanced Budget Act of 1997, § 3002(a)(1), codified at 47 U.S.C. 309(j). As WB points out, winning bidders in the September 1999 broadcast auction have already submitted their required down payments. WB argues that to interpret the CBPA such that these winning bidders do not receive an FCC authorization could have a chilling effect on the bid amounts in any future FCC auctions, and could be a "taking" in violation of the Fifth Amendment. See Comments of WB at 9-12.

<sup>92</sup> *Food and Drug Administration v. Brown & Williamson Tobacco Corp.*, No. 98-1152, slip op. at 10, 2000 WL 289576 (U.S.) (March 21, 2000).

<sup>93</sup> *Id.* In applying this principle to the facts of the FDA case, the Court noted that this is particularly true "where Congress has spoken subsequently and more specifically to the topic at hand." *Id.* Nevertheless, the principle applies here as well.

<sup>94</sup> 47 U.S.C. § 336(f)(7)(A)(ii)(III).

<sup>95</sup> We also stated that should we conclude that stations have an ongoing right to convert to Class A status, these Class A applicants would face the same requirement; that is, they would not be required to protect new (continued....)

section (f)(1)(D) of the Act, which requires the Commission to preserve the service areas of LPTV licensees upon certification of eligibility except in the case of "technical problems" in connection with DTV replication and maximization, does not include an exception to service area protection for new DTV service.<sup>96</sup> We stated our belief that the exclusion of new DTV service in section (f)(1)(D) means that new DTV entrants must preserve the service areas of LPTV stations that have been granted a certification of eligibility, and invited comment on this interpretation. We also stated our belief that Class A applicants who have filed acceptable certifications of eligibility would not be required to protect the DTV application and allotment proposals of new DTV entrants, and sought comment on this interpretation.

50. Decision. Upon further reflection, we have decided we should treat new DTV station applications<sup>97</sup> in the same manner as we are treating new NTSC station applications. That is, we would require Class A applicants to protect pending applications for a new DTV station that were on file November 29, 1999 and that had completed all processing short of grant as of that date. However, there are no new DTV station applications that were pending November 29, 1999 or that are currently pending. Before such an application will be accepted, a rule making proceeding must be completed to allot a new DTV channel to a community. At this time, we have not completed any such rule making proceeding. In a new DTV allotment rule making, we will require protection of Class A stations. We will not require Class A applicants to protect pending allotment proposals from new DTV entrants, that is, petitioners who do not already have a DTV authorization.<sup>98</sup>

## 5. DTV Maximization

### a. Definition of Maximization

51. Background. The CBPA provides that a Class A application for license or license modification may not be granted where the proposal would interfere with stations seeking to "maximize power" under the Commission's rules, if such station has complied with the notification requirements in Section (f)(1)(D) of the statute.<sup>99</sup> Section (f)(1)(D) requires that, to be entitled to protection by Class A applicants, DTV stations must file an application for maximization or a notice of intent to seek maximization by December 31, 1999, and file a bona fide application for maximization by May 1, 2000.<sup>100</sup>

We sought comment in the *Notice* on whether the term "maximize" in the statute refers only to situations in which stations seek power and/or antenna height greater than the allotted values, or whether

(Continued from previous page) \_\_\_\_\_

DTV stations granted by the Commission after the Class A station has filed an acceptable certification of eligibility.

<sup>96</sup> 47 U.S.C. § 336(f)(1)(D).

<sup>97</sup> These applications do not include applications to implement allotments in the initial DTV Table, or DTV maximization applications filed pursuant to the May 1, 2000 filing deadline, or applications filed pursuant to (f)(1)(D) of the CBPA to effect necessary allotment adjustments.

<sup>98</sup> Allotment proposals filed pursuant to Section (f)(1)(D) of the CBPA where necessary to resolve a technical problem are discussed under Section III. C. 5. c. of this *Report and Order*.

<sup>99</sup> 47 U.S.C. § 336(f)(7)(A)(ii)(IV).

<sup>100</sup> 47 U.S.C. § 336(f)(1)(D).

"maximization" also refers to stations seeking to extend their service area beyond the NTSC replicated area by relocating their station from the allotted site.

52. Decision. Comments on this issue were divided.<sup>101</sup> We believe that the best interpretation of the term "maximization," as used in the statute, refers both to power and antenna height increases above the values allotted in the DTV Table, and to site changes that extend the service area of DTV facilities beyond the NTSC replication facilities. A broad interpretation of the term maximization is consistent with the CBPA's emphasis on protecting the digital transition. Permitting changes to technical parameters and sites gives broadcasters wider flexibility to maximize coverage and maximize service to the public. In addition, by construing the term maximization to include site changes sought by full-service DTV stations, we allow such stations greater flexibility to seek engineering solutions that provide for efficient spectrum use. In this regard, we have historically encouraged applicants to employ coordination and interference agreements, including co-location of facilities, as a means of resolving interference conflicts. Site changes are often integral to such agreements.

53. We indicated in the *Notice* that the statutory language is ambiguous regarding the protection to be accorded by Class A applicants to DTV stations seeking to replicate or maximize power. Section (f)(1)(D), entitled "Resolution of Technical Problems," directs the Commission to preserve the service areas of LPTV licensees pending final resolution of a Class A application. That section further provides that if, after certification of eligibility for a Class A license, "technical problems arise requiring an engineering solution to a full-power station's allotted parameters or channel assignment in the digital television Table of Allotments, the Commission shall make such modifications as necessary (i) to ensure replication of the full-power digital television applicant's service area ...; and (ii) to permit maximization of a full-power digital television applicant's service area..." (if the applicant has complied with the notification and application requirements established by that section).<sup>102</sup> Although Section (f)(1)(D) appears to tie replication and maximization to resolution of technical problems, Section (f)(7) appears to require all applicants for a Class A license or modification of license to demonstrate protection to stations seeking to replicate or maximize power, as long as the station seeking to maximize has complied with the notification and application requirements of (f)(1)(D), without reference to any need to resolve technical problems on the part of the DTV station. Despite the reference in section (f)(1)(D) to technical problems, we continue to believe it is more consistent with the statutory schemes both for Class A LPTV service and for digital full-service broadcasting to require Class A applicants to protect all stations seeking to replicate or maximize DTV power, as provided in section (f)(7)(ii), regardless of the existence of "technical problems." The large majority of commenters that addressed this issue concur with this view.<sup>103</sup> Stations seeking to maximize must comply with the notification requirements in paragraph (f)(1)(D). This interpretation seems most consistent with the intent of Congress to protect the ability of DTV stations to replicate and maximize service areas.

<sup>101</sup> MSTV/NAB and Fox supported a broad interpretation of the term maximization. See Comments of MSTV/NAB at 5; Fox at 12. CBA argues that the term "maximization" should not be deemed a "carte blanche" for full-service stations to shut down Class A stations anytime, particularly where a full-service station seeks a power increase after the May 1, 2000 deadline in the statute and it seeks to extend coverage beyond its analog service area. In those situations, CBA argues an existing Class A station should be given priority, and if displaced, should be permitted to move to the channel that the maximized station abandons at the end of the DTV transition. Comments of CBA at 9-10.

<sup>102</sup> 47 U.S.C. § 336(f)(1)(D).

<sup>103</sup> See, e.g., Comments of APTS at 8; MSTV/NAB at 5-6; Fox at 7; Sinclair at 14.

**b. Preserving the Right to Maximize**

54. Background. We sought comment in the *Notice* on how the maximization rights in the statute can be applied to full-service stations that maximize their DTV facilities but subsequently move their digital operations to their original analog channel at the end of the transition. Some of these stations may not be in a position to file maximization applications on their analog channels by the deadline prescribed in the statute. We asked in the *Notice* whether these stations can preserve the right to maximize on their analog channels should they revert to those channels at the end of the transition. If so, we asked how the right to replicate the station's maximized DTV service area can be preserved on the analog channel. As a corollary issue, we also sought comment on how the maximization allowance in the CBPA applies to full-service stations for which the DTV channel allotment or both the NTSC and DTV channel allotments lie outside the DTV core spectrum (channels 2 - 51). We asked commenters to address whether these stations can preserve their right to replicate their maximized DTV service area on a new in-core channel once that channel has been assigned.

55. Decision. As a preliminary matter, we believe that all DTV licensees are entitled, at a minimum, to replicate the service area of their analog station. As we stated in *the Sixth Report and Order* in the DTV proceeding, we believe that service replication is important to ensure that digital broadcasters can continue to reach the audiences to which they provide analog service and that viewers continue to have access to the stations they can receive over-the-air.<sup>104</sup> In enacting the CBPA, Congress made clear that Class A service would not interfere with this service replication principle. As Congress stated, "recognizing the importance of, and the engineering complexity in, the FCC's plan to convert full-service television stations to digital format, [the CBPA] protects the ability of these stations to provide both digital and analog service *throughout their existing service areas*."<sup>105</sup>

56. The CBPA also recognizes and preserves the right of full-service television broadcasters to maximize their digital television service area, but balances this right against the provision of stability to Class A applicants and licensees. Sections (f)(1)(D) and (f)(7)(A) of the CBPA require Class A applicants to protect stations seeking to maximize power, if such stations have filed an application for maximization or a notice of intent to seek maximization by December 31, 1999, and filed a bona fide application for maximization by May 1, 2000.<sup>106</sup>

57. There are 17 full-service television stations that have been allotted both NTSC and DTV channels that lie outside the DTV core spectrum.<sup>107</sup> The Commission has stated that stations with both NTSC and DTV channels outside the core spectrum will be assigned new channels within the core from spectrum recovered after the transition.<sup>108</sup> As a number of commenters in this proceeding point out, the deadlines established in the CBPA for filing an application for maximization create a dilemma for these

<sup>104</sup> *Sixth Report and Order*, 12 FCC Rcd at 14605.

<sup>105</sup> Section-by-Section Analysis at S 14724 (emphasis added).

<sup>106</sup> 47 U.S.C. § 336(f)(1)(D) and (f)(7)(A)(ii)(IV).

<sup>107</sup> See Appendix B of the *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order* in MM Docket No. 87-268, 13 FCC Rcd 7418 (1998) ("*Reconsideration of the Sixth Report and Order*"). These 17 stations are located in the following cities: Riverside, CA; San Mateo, CA; Stockton, CA; Aurora, IL; Joliet, IL; Springfield, MA; Newark, NJ; Vineland, NJ; Riverhead, NY; Bethlehem, PA; two stations in Arecibo, PR; Caguas, PR; Naranjito, PR; Providence, RI; Lake Dallas, TX; Fairfax, VA.

<sup>108</sup> *Sixth Report and Order*, 12 FCC Rcd at 14628.



stations. These stations are required to file a maximization application to preserve their rights; however, they either cannot or do not want to maximize facilities on an out-of-core channel. Several commenters argue that these stations should not be required to file a maximization plan based on their temporary out-of-core DTV assignment, as maximization is expensive and these stations will not be operating on those channels after the transition. Moreover, these commenters argue that requiring maximization on an out-of-core channel does not provide certainty to Class A stations because the required interference protection will ultimately involve a different in-core channel.<sup>109</sup>

58. The problem of preserving the rights of full-service stations in this situation, and balancing those rights against the provision of certainty to Class A stations, is extremely complex. After careful consideration, we will adopt the following compromise. To preserve their ability to maximize once assigned a channel within the core, we will require stations with both NTSC and DTV channels outside the core to nonetheless maximize their DTV service area on their temporary out-of-core DTV channel. These stations must have filed a notice of intent to maximize and must file an application to maximize within the deadlines mandated by the CBPA. Once these stations are assigned a permanent in-core DTV channel, we will allow these stations to carry over to their in-core channel the maximized digital service area achieved on the out-of-core channel, to the extent that the in-core channel facilities for maintaining the maximized service area provide required interference protection to other DTV stations. Section (f)(1)(D) of the statute gives us broad authority to resolve problems arising with respect to replication and maximization, including problems involving the assignment of channels such as those faced by stations with out-of-core channel assignments.<sup>110</sup> Thus, stations seeking to carry over their maximized service areas to their newly assigned in-core DTV channels will have priority over conflicting Class A facilities.

59. We believe this approach strikes a reasonable balance between the rights of full-service stations and Class A facilities. While we recognize that there may be inefficiencies involved in requiring maximization on an out-of-core channel to preserve the right to maximize later on an in-core channel, allowing all full-service stations outside the core to "reserve" the right to maximize on unidentified channels within the core reduces substantially the certainty that can be accorded to Class A facilities. As we recognized in our DTV biennial review, core spectrum is becoming increasingly crowded and it will become increasingly difficult to locate channels for all parties seeking DTV spectrum in the core after the transition.<sup>111</sup> In view of the difficulty in establishing priorities among the numerous parties seeking in-core spectrum, we believe it is reasonable to require stations with both NTSC and DTV assignments outside the

---

<sup>109</sup> See, e.g., Comments of ALTV at 9-10.

<sup>110</sup> The legislative history to Section (f)(1)(D) makes clear that problems surrounding the assignment of channels constitute a technical problem within the scope of the technical resolution provisions of the statute. Congress stated

Subparagraph (d) mandates that the FCC must act to preserve the signal contours of an LPTV station pending final resolution of its application for a Class A license. In the event technical problems arise that require an engineering solution to a full-service station's allotted parameters or channel assignment in the DTV table of allotments, subparagraph (d) requires the FCC to make the necessary modifications to ensure that such full-service station can replicate or maximize its service areas, as provided for in the FCC rules. Section-by-Section Analysis at S 14725.

<sup>111</sup> See Notice of Proposed Rule Making, *In the Matter of Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, MM Docket No. 00-39, FCC 00-83, (rel. March 8, 2000).

core to first maximize DTV service on an out-of-core channel in order to retain the right to replicate that maximized service area on an in-core channel.

60. We will apply a similar requirement to stations with an analog channel within the core and a DTV channel outside the core, as well as to those stations with both channels inside the core that intend to convert their DTV operations to their analog channel at the end of the transition. These stations will also be required to maximize on their DTV channel in order to preserve their right to carry over that maximized service area to their analog in-core channel. We also believe that the CBPA requires that these stations must have filed a notice of intent to maximize and must file an application to maximize within the deadlines established in the statute. In addition, the maximized facilities they ultimately propose for DTV operation on their analog channel must provide required interference protection to other DTV stations. The election of a post-transition DTV channel by stations with both the analog and DTV allotments within the core is an issue discussed in our DTV biennial review.<sup>112</sup>

**c. Allotment Adjustments**

61. Background. As noted above, Section (f)(1)(D) of the CBPA directs the Commission to preserve the service areas of LPTV licensees, upon certification of eligibility, pending final resolution of a Class A application. However, that section also permits modifications to a full-service station's allotted parameters or channel assignment in the DTV Table of Allotments, where made necessary by "technical problems" requiring an "engineering solution," to ensure both replication and maximization of the DTV service area. We raised in the *Notice* certain questions regarding DTV allotment adjustments that are not addressed in the CBPA. Specifically, we asked whether a station requesting an adjustment to the DTV Table that would impinge upon the service area of a Class A station should be required to show that the modification can *only* be made in this manner. If the modification requires displacement of the Class A station, we asked if the affected Class A should be permitted to exchange channels with the DTV station, provided it could meet interference protection requirements on the exchanged channel.

62. Decision. As we indicated in the *Notice*, we recognize that it may be necessary to permit DTV stations to change channels and make adjustments to station facilities in order to correct unforeseen technical problems. For example, it was necessary in some cases to make DTV Table allotments on adjacent channels at noncollocated antenna sites in the same markets, which raised concerns among broadcasters over possible adjacent channel interference.<sup>113</sup> In addition to changing some of those allotments, we stated that we would address these concerns by tightening the DTV emission mask and by "allowing flexibility in our licensing process and for modification of individual allotments to encourage adjacent channel co-locations..."<sup>114</sup> We also provided broadcasters with flexibility to deal with allotment problems, for example, by permitting allotment exchanges among licensees in the same or adjacent markets.

63. Section (f)(1)(D) of the CBPA gives full-service stations the flexibility to make these kinds of necessary adjustments to DTV allotment parameters, including channel changes, even after certification of an LPTV station's eligibility for Class A status. That section provides for an exception to protection of Class A facilities to resolve "technical problems" associated with DTV replication and maximization, and provides for such modifications when necessary to "a full-power station's allotted parameters or *channel*

---

<sup>112</sup> *Id.*

<sup>113</sup> *Reconsideration of the Sixth Report and Order*, 13 FCC Rcd at 7456-57.

<sup>114</sup> *Id.*

assignment in the digital television Table of Allotments.” This language indicates that maximization encompasses channel changes as well as site changes and changes to technical parameters. Thus, stations that have filed an application for maximization or a notice of intent to maximize by December 31, 1999 and an application for maximization by May 1, 2000 have flexibility to make adjustments to the facilities proposed in these maximization applications where necessary to resolve technical problems that prevent implementation of the facilities proposed in these applications.

64. We will not require full-service stations requesting an adjustment to the DTV Table that will cause interference to the protected service contour of a Class A station to demonstrate that the adjustment can *only* be made in this fashion. We have outlined above the replication and maximization rights of full-service DTV licensees vis-a-vis Class A facilities, and do not believe that imposing additional obligations on DTV licensees to justify a modification request is warranted. However, we note that in the interest of ensuring efficient spectrum utilization we may question modification requests that unnecessarily impinge on Class A service. In addition, while we will not give Class A stations affected by allotment adjustments made to accommodate DTV stations the automatic right to exchange channels with the DTV station, we will consider such allotment exchanges on a case-by-case basis where both parties consent and where the parties meet all applicable interference requirements on the new channel. Where we determine such swaps meet interference and other criteria, we will not consider competing applications for these channels.

#### D. Methods of Interference Protection to Class A Facilities

65. Background. In the CBPA, Congress did not address the method of providing interference protection to Class A service areas, other than equating these areas with LPTV signal contours.<sup>115</sup> In the *Notice*, the Commission generally proposed to protect the Class A service contours in the manner that LPTV stations protect NTSC stations and each other.<sup>116</sup> We proposed that applicants for NTSC stations protect Class A stations pursuant to the criteria in Section 74.705 of the LPTV rules.<sup>117</sup> The *Notice* proposed that applicants for LPTV and TV translator stations and Class A facilities modifications protect Class A stations under the standards in Section 74.707.<sup>118</sup> The *Notice* sought comment on the means by which DTV application and allotment proposals should protect analog and digital Class A stations, as well as the means for protecting such stations against interference from NTSC, Class A, LPTV and TV

<sup>115</sup> Section-by-Section Analysis at S14725.

<sup>116</sup> *Notice* at ¶¶ 14, 16.

<sup>117</sup> 47 C.F.R. § 74.705. The various protection standards in this rule account for different types of interference based on the relationships between the channels of protected and proposed facilities. Most of these are given in terms of desired-to-undesired (“D/U”) field strength ratios, which impose limits on the strength of unwanted signals at points along a station’s protected contour. A D/U ratio is the numerical difference (in dB) between the field strength values of the desired and undesired signal (in dBu). Different ratios apply to the protection of stations on the same channel, the first adjacent channels above and below the proposed channel and the 14<sup>th</sup> and 15<sup>th</sup> channels below the proposed channel. For example, a D/U ratio of 28 dB is used to protect a co-channel UHF station where the proposed and protected stations specify different carrier frequency offsets. The predicted field strength of the proposed LPTV station must be at least 28 dB less than the protected 64 dBu field strength at points along the NTSC station’s Grade B contour; the field strength of the proposed facilities cannot exceed 46 dBu. Section 74.705 also prescribes minimum distance separations between NTSC stations and proposed LPTV facilities for the 2<sup>nd</sup>, 3<sup>rd</sup>, or 4<sup>th</sup> adjacent channel to that of NTSC stations or the 7<sup>th</sup> adjacent channel below NTSC channels.

<sup>118</sup> 47 C.F.R. § 74.707.

translator application proposals. We also invited comment on whether DTV application proposals should protect Class A service contours or the population receiving service within these contours, in the manner in which DTV stations protect full-service NTSC stations and each other.<sup>119</sup>

66. **Decision.** We will adopt the protection methods proposed in the *Notice*. We first present the standard methods for protecting Class A service and then discuss alternative methods that may be used on a waiver basis.

#### 1. Analog Full-Service TV Protection to Analog Class A

67. We will require full-service analog TV stations to protect Class A stations by using the criteria in Section 74.705, a position supported by the CBA, MSTV/NAB and other commenters. We agree with CBA that protection requirements generally based on distance separations would be impractical and spectrally inefficient because LPTV stations have been authorized at different antenna heights and powers on the basis of a contour protection methodology.<sup>120</sup> Table 1 below gives the D/U ratios that must be met or exceeded at the Class A protected signal contours.

Table 1

Service Band	Protected Class A Contour (dBu)	Co-channel D/U Ratio (dB)	1 <sup>st</sup> Upper Adjacent Channel D/U Ratio (dB)	1 <sup>st</sup> Lower Adjacent Channel D/U Ratio (dB)	14 <sup>th</sup> Upper Adjacent Channel D/U Ratio (dB)	15 <sup>th</sup> Upper Adjacent Channel D/U Ratio (dB)
Low VHF (channel 2 -6)	62	+ 28/45	- 12	- 6	n/a	n/a
High VHF (channels 7-13)	68	+ 28/45	- 12	- 6	n/a	n/a
UHF (channels 14-69)	74	+ 28/45	- 15	- 15	- 23	- 6

The Class A protected signal contours are to be determined by using the Commission F(50,50) signal propagation model. Potentially interfering signal levels at the protected contour are to be determined by using the F(50,10) propagation model for co-channel signals and the F(50,50) model for the 1<sup>st</sup>, 14<sup>th</sup> and 15<sup>th</sup> adjacent channel signals.<sup>121</sup> Interference predictions will be based on the facilities proposed in the

<sup>119</sup> DTV interference protection criteria are given in 47 C.F.R. §§ 73.622 and 73.623 and also are described in OET Bulletin 69, which is available on the FCC Internet site at <http://www.fcc.gov/oet/info/documents/bulletins/#69>.

<sup>120</sup> See Comments of CBA at 6 and accompanying Technical Supplement at 2.

<sup>121</sup> Use of these signal propagation curves for these purposes are specified in Section 74.705(c) of the Commission's Rules. The FCC computer model used in application acceptance studies (the "LPONE" program) calculates D/U ratios at 10-degree azimuthal increments along the protected contour. We note that channels 4 and 5 and channels 6 and 7 are not adjacent channels.